

**BellSouth Corporation**  
Suite 900  
1133-21st Street, N.W.  
Washington, DC 20036-3351

kathleen.levitz@bellsouth.com

**Kathleen B. Levitz**  
Vice President-Federal Regulatory

202 463 4113  
Fax 202 463 4198

October 1, 2002

WRITTEN EX PARTE

Ms Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 94-102

Dear Ms Dortch:

Attached is the model agreement drafted by BellSouth to govern the Wireless Service Carriers access to the BellSouth 911 Automatic Location Identification (ALI) database for population of wireless location information. Also attached is the model agreement governing Mobile Position Center operators' interconnection to the BellSouth ALI databases to enable the latter to provide Wireless E911 Phase 1 and Phase 2 services to their customers. I provided copies of these documents electronically on September 30, 2002, to Barry Ohlson, Chief of the Wireless Telecommunications Bureau's Competition Division, and to Blaise Scinto, Senior Deputy Chief of that Division.

In accordance with Commission rules, I am filing two copies of this notice and the attached documents and request that they be included in the record of the proceeding identified above.

Sincerely,



Kathleen B. Levitz

**Attachments**

cc: Barry Ohlson (w/o attachments)  
Blaise Scinto (w/o attachments)

## **WIRELESS E-911 PHASE 2 MPC OPERATOR INTERFACE AGREEMENT**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and <CUSTOMER NAME> ("Customer"), a <STATE> corporation, and shall be deemed effective on the date of the last signature of both Parties ("Effective Date"). This Agreement may refer to either BellSouth or Customer or both as a "Party" or as "Parties."

**WHEREAS**, BellSouth wishes to furnish, and Customer wishes to purchase services, as set forth herein, in the BellSouth territory state(s) of **Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, BellSouth and Customer agree as follows:

### **1.0 TERM OF AGREEMENT**

The initial term of this Agreement shall be five years beginning on the Effective Date and shall continue in effect thereafter, unless earlier terminated as otherwise set forth herein. After the Initial Term, this Agreement shall renew automatically and continue in full force and effect in consecutive one-month increments (each a "Renewal Term") unless and until either Party notifies the other in writing at least thirty (30) days before the end of any Renewal Term that it intends not to renew the Agreement. This Agreement shall continue in effect as specified herein unless:

- (a) BellSouth terminates, with or without cause, at any time upon at least thirty (30) days prior written notice to Customer; or,
- (b) Either party cancels pursuant to the terms hereof upon the other party's breach.

### **2.0 DEFINITIONS**

- 2.1 BellSouth Interface** - shall mean the interface described in BellSouth TR73610, Issue 2 incorporated here in by this reference and shall include any amendments to said TR as may occur from time to time during the term of this Agreement.
- 2.2 Intrado Interface** - shall mean the Intrado SR/ALI E2 messaging interface set forth in the Intrado document "ALI to MPC Interface Specifications for TCP/IP Implementation of TIA/EIA/J-STD-036 E2", Issue 1.1, June 2001 incorporated herein by this reference and shall include any amendments to said document as may occur from time to time during the term of this Agreement. Said document is available free of charge from Intrado.
- 2.3 Wireless Phase II** – The ability for PSAP to receive longitude and latitude (x,y) coordinate location data from wireless service providers ('WSPs').

- 2.4**        **Wireless Phase I** – The ability for PSAPs to receive call back telephone number (“TN”) and cell tower location information from WSPs.
- 2.5**        **PSAP** – The Public Safety Answering Point operated by the subscriber to 911 service.
- 2.6**        **ALI Database** - The Automatic Location Identification Database that provides location information to PSAPs as 9-1-1 calls are processed.
- 2.7**        **E2 Connectivity** - The ability of the MPC Operator to connect to the ALI database hosts for the purpose of populating location information.
- 2.8**        **Mobile Position Center (‘MPC’)** - The network entity that provides location information to the ALI Databases

### **3.0    SCOPE OF AGREEMENT**

BellSouth shall provide to Customer the following Services:

BellSouth will provide the ability for Customer to connect to the BellSouth ALI databases. This connectivity shall be used solely for the purpose of allowing Customer to provide Wireless Phase I and II services to its customers.

### **4.0    PROJECT DELIVERABLES**

BellSouth will support the Intrado implementation of the J-STD-036 E2 interface as described in BellSouth Technical Reference TR73610, Issue 2: in order to facilitate Customer’s E2 Connectivity to the BellSouth ALI databases.

### **5.0    CUSTOMER DELIVERABLES**

Customer shall provide the following:

- 5.1**        Customer shall provide a point to point or frame relay data circuit between their MPC and each ALI database with termination of the circuit at the TCP/IP router provided by the ALI databases. The Customer circuit must be capable of supporting TCP/IP. Native SS7 network connectivity is not compliant with Customer’s interconnection obligations. There is no obligation for Customer to locate equipment at the ALI database locations.
- 5.2**        Each Customer must establish separate E2 Connectivity with each ALI database serving a PSAP. The Customer is responsible for determining if these circuits have the required capacity to carry the anticipated E911 traffic.
- 5.3**        Customer is responsible for the provisioning, maintenance and monitoring of these circuits and monitoring of the TCP/IP session.
- 5.4**        Customer shall provide circuit type information and all other necessary provisioning information such as Data Link Connection Identifier for

Frame Relay circuits ("DLCT"), line parameters, inter-exchange carrier circuits, as well as all frame relay provider coordination.

- 5.5** Customer shall provide registered IP addresses for the BellSouth ALI database router ports as well as all IP addresses visible to the BellSouth ALI databases.
- 5.6** Prior to turning up the E2 Connectivity, Customer shall certify that the BellSouth ALI database has been updated with records formatted to the requirements described in the BellSouth E911 Wireless Carrier Guide, incorporated herein by this reference and shall include any amendments to said Guide as may occur from time to time during the term of this Agreement.
- 5.7** Prior to turning up the E2 Connectivity, Customer shall provide to BellSouth Wireless Phase II TN ranges (pANI, ESRK, etc.) and the associated MPC information to invoke the appropriate E2 interface.
- 5.8** Any requirements set forth in the BellSouth Technical Reference TR73610, Issue 2 as said reference may be amended from time to time during the term of the agreement

## **6. PRICING AND PAYMENTS**

- 6.1** Customer shall pay BellSouth the following charges/rates for services provided under this Agreement:

Upon execution of this Agreement, Customer will pay \$17,500 for the one-time logical router port charge for E2 Connectivity for each BellSouth ALI database, which includes required installation and testing. This charge must be paid within 30 days of the circuit connection.

- 6.2** This fee covers 40 hours of lab testing during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, Eastern Standard Time, holidays excluded.) Any additional testing will be negotiated under a separate agreement and will incur additional cost. Customer will reimburse BellSouth for all pre-approved travel and lodging expenses, including meals, associated with performing the services set forth in this Agreement.
- 6.3** There will also be a recurring monthly fee per logical router port of \$732. This fee must be paid within 30 days of the billing date.
- 6.4** A late payment charge of the lesser of 1-1/2% per month or the maximum rate approved by law will apply to any payment received by BellSouth later than 30 days after bill date.

## 7. TAXES

BellSouth shall add to any invoice submitted to Customer for payment an amount equal to any applicable taxes, local, state or federal, however designated, that may be validly levied or based upon this Agreement or upon the deliverables furnished hereunder. Taxes excluded and not applicable include:

- (a) Ad valorem personal property taxes;
- (b) State and local privilege and excise taxes based on gross revenue
- (c) Taxes based on or measured by Customer's or BellSouth net income; and
- (d) Any taxes or amounts in lieu thereof paid or payable by Customer or BellSouth in respect of the foregoing excluded items.

BellSouth shall bill applicable taxes as separate items on Customer's invoices and shall not include them in the purchase price. BellSouth must collect all appropriate state and local sales and use taxes from Customer on all sales of taxable tangible personal property and taxable services.

## 8. INDEPENDENT CONTRACTOR

BellSouth shall perform all work in connection with the services described herein as an independent contractor and not as the agent or employee of Customer. All persons furnished by BellSouth shall be for all purposes solely BellSouth's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. BellSouth shall furnish, employ and have exclusive control of all persons engaged in performing services under this Agreement and shall prescribe and control the means and methods of performing such services by providing adequate and proper supervision. BellSouth shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes such as employment, social security and other payroll taxes, including applicable contributions from such person(s) when required by law.

## 9. LIABILITY

**9.1 Customer Liability.** In the event that Customer consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of Customer under this Agreement.

**9.2 Liability for Acts or Omissions of Third Parties.** BellSouth shall not be liable to Customer for any act or omission of another party providing services to Customer.

**9.3 Limitation of Liability**

**9.3.1** Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury or liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

**9.3.2** BellSouth shall not be liable for the content or accuracy of any data provided by Customer or provided under this Agreement. Customer shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims suits, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising from BellSouth's performance under this Agreement related to inaccurate or incomplete data. BellSouth shall forward to Customer any complaints received by BellSouth relating to the accuracy of such data.

**9.3.3** IN NO EVENT SHALL BELL SOUTH OR ANY OF ITS AFFILIATES BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, REVENUE, USE OR DATA WHETHER BROUGHT IN CONTRACT OR TORT, ARISING OUT OF OR CONNECTED WITH THE SERVICES PROVIDED.

**9.4 Indemnification for Certain Claims.** The Party providing services hereunder, its affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving company's own communications, or (2) any claim, loss or damage claimed by the Party receiving services arising from such company's use or reliance on the providing company's services, actions, duties, or obligations arising out of this Agreement.

**9.5 Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

## **10. ASSIGNMENT**

Customer must have BellSouth's written consent before Customer assigns, in whole or in part, any of its rights, interests or obligations hereunder. Customer shall deliver to BellSouth written notice of its intent to assign, at least thirty (30) days before assignment. BellSouth shall consider void any assignment to which it has not consented. Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the written consent of the other Party shall be void. A Party may assign

this Agreement or any right, obligation, duty or other interest hereunder to an affiliate of the Party without the consent of the other Party, provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the effective date thereof. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under the Agreement shall be binding on all successors in interest and assigns of such Party. No assignment of delegation hereof shall relieve the assignor of its obligations under this Agreement in the event the assignee fails to perform such obligations.

## **11. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION**

**11.1 No License.** No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Customer is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any BellSouth name, service mark or trademark (collectively, the "Marks"). The Marks of BellSouth include those Marks owned directly by BellSouth and those Marks that BellSouth has a legal and valid license to use.

**11.2 Ownership of Intellectual Property.** Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

**11.3 Indemnification.** The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims.

**11.4 Claim of Infringement.** In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected facilities or equipment is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:

**11.4.1** modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

**11.4.2** obtain a license sufficient to allow such use to continue.

**11.4.3** In the event previous sub-sections are commercially unreasonable, then said Party may, terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

**11.5 Exception to Obligations.** Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

**11.6 Exclusive Remedy.** The foregoing shall constitute the Parties' sole and exclusive Remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

## **12. PROPRIETARY AND CONFIDENTIAL INFORMATION**

**12.1 Proprietary and Confidential Information.** It may be necessary for BellSouth and Customer each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

**12.2 Use and Protection of Information.** Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.



**12.3 Exceptions.** Recipient will not have an obligation to protect any portion of the Information which:

- (a) Is made publicly available by the Discloser or lawfully by a nonparty to this Agreement;
- (b) Is lawfully obtained by Recipient from any source other than Discloser;
- (c) Is previously known to Recipient without an obligation to keep it confidential;
- or,
- (d) Is released from the terms of this Agreement by Discloser upon written notice to Recipient.

**12.4** Recipient agrees to use the Information solely for the purposes of performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties.

**12.5** Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

**12.6 Survival of Confidentiality Obligations.** The Parties' rights and obligations under this Section shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

### **13. FORCE MAJEURE**

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, terrorist acts, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

### **14. MODIFICATION OF AGREEMENT**

**14.1** If Customer changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility

of Customer to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

**14.2** No modification, amendment, supplements to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

## **15. SEVERABILITY**

If any provision(s) of this Agreement are invalid or unenforceable under the laws applicable to the entire Agreement, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement. Instead, the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of BellSouth and Customer shall be construed and enforced accordingly.

## **16. WAIVERS**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

## **17. GOVERNING LAW**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

## **18. NOTICES**

Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**BellSouth Telecommunications, Inc.**  
**Wireless E911 Product Manager**  
**675 West Peachtree Street**  
**34 Floor**  
**Atlanta, GA 30375\_**

<Customer Name>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

**19. RULE OF CONSTRUCTION**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

**20. HEADINGS OF NO FORCE OR EFFECT**

The section headings used in this Agreement are for convenience only and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**21. MULTIPLE COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**22. COMPLIANCE WITH APPLICABLE LAW**

Each Party shall comply at its own expense with Applicable Law.

**23. NECESSARY APPROVALS**

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

**24. GOOD FAITH PERFORMANCE**

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

**25. NON-EXCLUSIVE RIGHTS**

This Agreement does not grant Customer an exclusive privilege to purchase services from BellSouth. BellSouth at its option may provide similar services to other entities. This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor does it obligate either Party to provide or purchase any services.

**26. SURVIVAL**

The Parties' obligations under this Agreement, which, by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**27. ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

**IN WITNESS WHEREOF**, the parties have manually or by electronic signature executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the effective date specified above.

**<CUSTOMER NAME>**

**BellSouth Telecommunications, Inc.**

**By:**

\_\_\_\_\_  
(Authorized Signature)

**By:**

\_\_\_\_\_  
(Authorized Signature)

**Name:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

## **WIRELESS E-911 PHASE 2 INTERFACE AGREEMENT FOR WIRELESS SERVICE PROVIDERS**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and <CUSTOMER NAME> ("Customer"), a <STATE> corporation, and shall be deemed effective on the date of the last signature of both Parties ("Effective Date"). This Agreement may refer to either BellSouth or Customer or both as a "Party" or as "Parties."

**WHEREAS**, BellSouth wishes to furnish, and Customer wishes to purchase services to enable the Wireless Service Providers to furnish Wireless Phase 2 E911 to their customers in the BellSouth territory state(s) of **Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi North Carolina, South Carolina and Tennessee** ("Services").

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, BellSouth and Customer agree as follows:

### **1.0 TERM OF AGREEMENT**

The initial term of this Agreement shall be five years beginning on the Effective Date and shall continue in effect thereafter unless earlier terminated as otherwise set forth herein. After the Initial Term, this Agreement shall renew automatically and continue in full force and effect in consecutive one-month increments (each a "Renewal Term") unless and until either Party notifies the other in writing at least thirty (30) days before the end of any Renewal Term that it intends not to renew the Agreement. This Agreement shall continue in effect as specified herein unless:

- (a) BellSouth terminates, with or without cause, at any time upon at least thirty (30) days prior written notice to Customer; or,
- (b) Upon execution of a new agreement at terms to be renegotiated between the Parties; or,
- (c) Either party cancels pursuant to the terms hereof upon the other's breach.

### **2.0 DEFINITIONS**

- 2.1 BellSouth Interface** - shall mean the interface described in BellSouth TR73610, Issue 2 incorporated here in by this reference and shall include any amendments to said TR as may occur from time to time during the term of this Agreement.
- 2.2 Intrado Interface** - shall mean the Intrado SR/ALI E2 messaging interface set forth in the Intrado document "ALI to MPC Interface Specifications for TCP/IP Implementation of TIA/EIA/J-STD-036 E2", Issue 1.1, June 2001 incorporated herein by this reference and shall include any amendments to said document as may occur from time to time during the term of this Agreement. Said document is available free of charge from Intrado.

- 2.3 Wireless Phase 2** – The ability for PSAP to receive longitude and latitude (x,y) coordinate location data from WSPs. This will enable to PSAPs to determine the location of wireless callers at the time the call was placed.
- 2.4 Wireless Phase 1** – The ability for PSAPs to receive call back telephone number ‘TN’ and cell tower location information from Wireless Service Providers.
- 2.5 PSAP** – The Public Service Answering Point operated by the subscriber to the 911 service.
- 2.6 ALI Database** - The Automatic Location Identification Database that provides location information to PSAPs as 9-1-1 calls are processed.
- 2.7 E2 Connectivity** - The ability of the MPC Provider to connect to the ALI database hosts for the purpose of populating location information.
- 2.8 Mobile Position Center (‘MPC’)** - The network entity that provides location information to the ALI Databases

### **3.0 SCOPE OF AGREEMENT**

BellSouth shall provide to the Customer the following Services:

**Wireless E-911 Phase 2 Service.** BellSouth will enable Wireless Service Providers ("WSPs") to access the BellSouth 911 Automatic Location Identification (ALI) database for population of wireless location information. WSPs will access the ALI database utilizing an E2 interface provided by the WSP between the ALI database hosts and the WSP’s Mobile Position Centers (MPCs). If provided by the Customer and requested by the PSAP, BellSouth will include the longitude and latitude in the ALI response transmitted to the PSAP.

### **4.0 PROJECT DELIVERABLES**

BellSouth will support the Intrado implementation of the J-STD-036 E2 interface as described in BellSouth Technical Reference TR73610, Issue 2; in order to facilitate connectivity to the BellSouth ALI database,

### **5.0 CUSTOMER DELIVERABLES**

Customer shall provide the following:

- 5.1** The Customer must utilize an MPC provider that has established E2 connectivity with BellSouth. If the Customer chooses to act as its own MPC provider, Customer must also execute a separate Wireless E-911 Phase 2 MCP Operator Interface Agreement with BellSouth.
- 5.2** Appropriate records in the BellSouth ALI database must be populated prior to turning up service. The Customer shall populate the BellSouth ALI database with its records formatted to the requirements described in

the BellSouth E911 Wireless Carrier Guide, incorporated herein by this reference and amended from time to time.

- 5.3** It is the Customers responsibility to obtain the data circuits for the E2 Connectivity to the ALI database hosts. BellSouth can provide intra LATA transport. If the circuits are inter LATA the Customer must arrange to transport the circuit across the LATA boundary.

## **6.0 PRICING AND PAYMENTS**

- 6.1** Customer shall pay BellSouth the following charges/rates for services provided under this Agreement:

The Customer shall pay \$0.11 per wireless 911 call, to direct, via the E2 Connectivity interface, location information as a result of a PSAP request for said information. This charge shall include all requests associated with the original 911 call.

- 6.2** The charges will be billed on a monthly basis. Customer shall pay BellSouth no later than 30 days after bill date.
- 6.3** A late payment charge of the lesser of 1-1/2% per month or the maximum rate approved by law will apply to any payment received by BellSouth later than 30 days after bill payment date.

## **7.0 TAXES**

BellSouth shall add to any invoice submitted to Customer for payment an amount equal to any applicable taxes, local, state or federal, however designated, that may be validly levied or based upon this Agreement or upon the deliverables furnished hereunder. Taxes excluded and not applicable include:

- (a) Ad valorem personal property taxes;
- (b) State and local privilege and excise taxes based on gross revenue
- (c) Taxes based on or measured by Customer's or BellSouth net income; and
- (d) Any taxes or amounts in lieu thereof paid or payable by Customer or BellSouth in respect of the foregoing excluded items.

BellSouth shall bill applicable taxes as separate items on Customer's invoices and shall not include them in the purchase price. BellSouth must collect all appropriate state and local sales and use taxes from Customer on all sales of taxable tangible personal property and taxable services.

## **8.0 INDEPENDENT CONTRACTOR**

BellSouth shall perform all work in connection with the services described herein as an independent contractor and not as the agent or employee of Customer. All persons furnished by BellSouth shall be for all purposes solely BellSouth's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. BellSouth shall furnish, employ and have exclusive control of all persons engaged in performing services under this Agreement and shall prescribe and control the means and methods of performing such services by providing adequate and proper supervision. BellSouth shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes such as employment, social security and other payroll taxes, including applicable contributions from such person(s) when required by law.

## **9.0 LIABILITY**

**9.1 Customer Liability.** In the event that Customer consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of Customer under this Agreement.

**9.2 Liability for Acts or Omissions of Third Parties.** BellSouth shall not be liable to Customer for any act or omission of another party providing services to Customer.

### **9.3 Limitation of Liability**

**9.3.1** Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury or liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

**9.3.2** BellSouth shall not be liable for the content or accuracy of any data provided by the Customer or provided under this Agreement. Customer shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims suits, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising from BellSouth's performance under this Agreement related to inaccurate or incomplete data. BellSouth shall forward to Customer any complaints received by BellSouth relating to the accuracy of such data.

**9.3.3** IN NO EVENT SHALL BELL SOUTH OR ANY OF ITS AFFILIATES BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, REVENUE, USE OR DATA WHETHER BROUGHT IN CONTRACT OR TORT, ARISING OUT OF OR CONNECTED WITH THE SERVICES PROVIDED.



**9.4 Indemnification for Certain Claims.** The Party providing services hereunder, its affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving company's own communications, or (2) any claim, loss or damage claimed by the Party receiving services arising from such company's use or reliance on the providing company's services, actions, duties, or obligations arising out of this Agreement.

**9.5 Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

## **10.0 ASSIGNMENT**

Customer must have BellSouth's written consent before Customer assigns, in whole or in part, any of its rights, interests or obligations hereunder. Customer shall deliver to BellSouth written notice of its intent to assign, at least thirty (30) days before assignment. BellSouth shall consider void any assignment to which it has not consented. Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an affiliate of the Party without the consent of the other Party, provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the effective date thereof. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under the Agreement shall be binding on all successors in interest and assigns of such Party. No assignment of delegation hereof shall relieve the assignor of its obligations under this Agreement in the event the assignee fails to perform such obligations.

## **11.0 INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION**

**11.1 No License.** No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Customer is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any BellSouth name, service mark or trademark (collectively, the "Marks"). The Marks of BellSouth include those Marks owned directly by BellSouth and those Marks that BellSouth has a legal and valid license to use.

**11.2 Ownership of Intellectual Property.** Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as

provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

**11.3 Indemnification.** The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims.

**11.4 Claim of Infringement.** In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected facilities or equipment is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:

**11.4.1** modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

**11.4.2** obtain a license sufficient to allow such use to continue.

**11.4.3** In the event previous sub-sections are commercially unreasonable, then said Party may, terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

**11.5 Exception to Obligations.** Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

**11.6 Exclusive Remedy.** The foregoing shall constitute the Parties' sole and exclusive

Remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

## **12.0 PROPRIETARY AND CONFIDENTIAL INFORMATION**

**12.1 Proprietary and Confidential Information.** It may be necessary for BellSouth and Customer each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

**12.2 Use and Protection of Information.** Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

**12.3 Exceptions.** Recipient will not have an obligation to protect any portion of the Information which:

- (a) Is made publicly available by the Discloser or lawfully by a nonparty to this Agreement;
- (b) Is lawfully obtained by Recipient from any source other than Discloser;
- (c) Is previously known to Recipient without an obligation to keep it confidential; or,
- (d) Is released from the terms of this Agreement by Discloser upon written notice to Recipient.

**12.4** Recipient agrees to use the Information solely for the purposes of performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties.

**12.5** Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

**12.6 Survival of Confidentiality Obligations.** The Parties' rights and obligations under this Section shall survive and continue in effect until two (2) years after the

expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

### **13.0 FORCE MAJEURE**

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, terrorist acts, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

### **14.0 MODIFICATION OF AGREEMENT**

**14.1** If Customer changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Customer to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

**14.2** No modification, amendment, supplements to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

### **15.0 SEVERABILITY**

If any provision(s) of this Agreement are invalid or unenforceable under the laws applicable to the entire Agreement, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement. Instead, the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of BellSouth and Customer shall be construed and enforced accordingly.

### **16.0 WAIVERS**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

## **17.0 GOVERNING LAW**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

## **18.0 NOTICES**

Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**BellSouth Telecommunications, Inc.**  
**Wireless E911 Product Manager**  
**675 West Peachtree Street**  
**34 Floor**  
**Atlanta, GA 30375**

<Customer Name>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

## **19.0 RULE OF CONSTRUCTION**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

## **20.0 HEADINGS OF NO FORCE OR EFFECT**

The section headings used in this Agreement are for convenience only and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

## **21.0 MULTIPLE COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

## **22.0 COMPLIANCE WITH APPLICABLE LAW**

Each Party shall comply at its own expense with Applicable Law.

### **23.0 NECESSARY APPROVALS**

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

### **24.0 GOOD FAITH PERFORMANCE**

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

### **25.0 NON-EXCLUSIVE RIGHTS**

This Agreement does not grant Customer an exclusive privilege to purchase services from BellSouth. BellSouth at its option may provide similar services to other entities. This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor does it obligate either Party to provide or purchase any services.

### **26.0 SURVIVAL**

The Parties' obligations under this Agreement, which, by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

### **27.0 ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

**IN WITNESS WHEREOF**, the parties have manually or by electronic signature executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the effective date specified above.

**<CUSTOMER NAME>**

**BellSouth Telecommunications, Inc.**

**By:**

\_\_\_\_\_

(Authorized Signature)

**By:**

\_\_\_\_\_

(Authorized Signature)

**Name:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_